

ML3 Handout – Agencies: FCC/MPA/New Media Regulation
[Slide numbers in square brackets]

1) [2] The Federal Communications Commission

- a. The FCC is a government agency responsible for regulating the radio, tv, and phone industries industries
 - i. It is an independent government agency, made up of 5 appointed commissioners
- b. FCC regulates all telecommunications under the Communications Act, approves mergers/licenses, rule on net neutrality renewals, issue fines for non-compliance
- c. What does the FCC not do? Does not have any power over the Internet or UGC (user generated content)
- d. FCC only has power over broadcast TV: In TV, broadcast (ABC, NSMBC) is regulated different than cable (AMC, FX), which is regulated different than specialty (HBO Showtime), which is regulated different than subscription video on demand/SVOD (Netflix, Hulu, Amazon Prime) networks
 - i. FCC can regulate the Content of a broadcast for swearing, obscenity, nudity

2) [3] History of the FCC: Public Interest and Fairness Doctrine

- a. Strategy: Listen to the viewers and listeners to determine what is in the Public interest to preserve an uninhibited marketplace of ideas
- b. *Red Lion* case requires all radio and television broadcasters to present a Fair and Balanced discussion of public issues
- c. Generally, the FCC relies on broadcasters to determine what is fair and reasonable to broadcast over the airwaves
- d. **Fairness Doctrine**: Broadcasters must devote a “reasonable percentage” of time to discussing controversial issues and provide “reasonable opportunities” of contrasting views

- e. The issue was that the Fairness doctrine only applied to holders of **Broadcast** licenses (not cable)
- f. Purpose of the Doctrine was to preserve a marketplace of ideas in which truth will undoubtedly prevail; by 1985, the FCC said that viewpoint diversity is **Fully served** by the multiplicity of voices
 - i. In 1987, the Fairness Doctrine was **Eliminated** by SCOTUS, resulting in the party polarization of networks
- g. Each network now has to ensure “**Equal time**” for each party during election seasons

3) [4, 5] Net Neutrality

- a. **Net Neutrality** – The idea that all Internet Service Providers (ISP’s) must treat all internet communications **Equally** and cannot intentionally block or slow or charge money for specific content
- b. **Arguments for Net Neutrality** – **Promote encourage innovation**
- c. **Opponents of Net Neutrality** – **Increased cost for consumers**

4) [6] Obscenity, Indecency and Profanity

- a. FCC does not permit airing **Obscene** programming to air at any time
- b. Violation to air **indecent or profane programing** during certain hours (**6am to 10am**)
 - i. Policy: **protect minors from harmful content**
- c. **Obscenity** – 3 factor “Miller” test
- d. **Indecency** – language or material depicting sexual activity that is offensive as measured by **Community standards**, but not quite rising to the level of obscenity
- e. **Profanity** – **swearing or cursing** – grossly offensive to the public who consider it a nuisance

[7] Examples of FCC Fines: Janet Jackson, Howard Stern, News Reports

- f. **[8] “Fleeting Expletives”** – before 2004, FCC would generally avoid issuing fines if profanity was used Once and it appeared to be accidentally
 - i. Ex: Bono’s 2003 Golden Globes Speech for “The Hands that Built America”; the FCC found this speech to be not indecent and chose not to fine NBC for airing the clip in real time
- g. Most award shows are now broadcast on a 7 second delay so that censors can catch any obscene language and avoid fines
- h. Penalties: FCC can Revoke a TV/radio stations or Deny its renewal
- i. FCC can regulate broadcast and radio networks, but has No power over specialty cable, satellite or internet/subscription video on demand (SVOD) content

5) **[9] MPA**

- a. The Motion Picture Association of America (MPA) is used to regulate films and monitor piracy/Copyright infringement
- b. **MPA Ratings:** G - general audience; PG - Parental guidance; PG-13 - some material inappropriate; R - under 17 requires parent/guardian; NC-17 - Nobody under 17 admitted; NR - Not rated

- * c. 3 primary sources for movie revenue: (1) Theatrical; (2) Digital; (3) Physical

6) **[10] New Media Regulation/User Generated Content (UGC)**

- a. Streaming Video on Demand (SVOD) outlets: _____
 - i. SVOD services are Not regulated for its content by any major governing body

- b. UGC - user-generated content posted on online platforms
- i. Ex: **YouTube, TikTok, Twitter, Reddit**
- c. Under the digital millennium copyright act (DMCA), websites that host content are **Not liable** for what its users post unless (1) they exercise some kind of editorial discretion/**edit post**; or (2) promise to remove or edit a post and then **do nothing**
- d. §512 of the DMCA provides a “**Safe harbor**” liability protection for internet service providers (ISP’s)
- e. **[11]** *Viacom v. YouTube* case – 100k clips of MTV, CBS and Nickelodeon footage on YouTube’s website resulted in lawsuit for Copyright infringement
Viacom Argument: **We own this content and your profiting off it**
YouTube Argument: **User posted these content and we were unaware**
Result? **Parties settled for an undisclosed amount**

[12] Social Media and Media Law: Fyre Festival

- f. 2017 music festival created by Billy McFarland and Ja Rule was promoted by Instagram influencers and models, who did not disclose that they were being paid to promote the festival, which was later cancelled. Concertgoers and vendors were left stranded. McFarland later sentenced to prison and fined \$26M.
- i. Influencers received **No penalty** for their actions; Instagram ads now include **#ad**

[13] Tik/Tok-Bytedance Lawsuit: \$92M settlement for VPPA violations, Section 1542 release from future lawsuits